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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,290	05/09/2006	Trygve Burchardt	095868-1009	4301

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EXAMINER	
BUCHANAN, JACOB	

ART UNIT	PAPER NUMBER
1725	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/563,290	**Applicant(s)** BURCHARDT, TRYGVE	
	Examiner Jacob Buchanan	**Art Unit** 1725	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *26-69*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Basia Ridley/
Supervisory Patent Examiner, Art Unit 1725

Continuation of 3. NOTE: The proposed amendments require further search and consideration as claims 61-69 changed statutory categories.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that none of the references disclose, teach, or suggest adding a solvent to a dry agglomerate that is formed from a mixture of dry powders.

This is not considered persuasive. Takuya discloses mixing PTFE particles in a dry form and then later adds a first organic solvent to produce a paste ([0017]). Because Takuya discloses "mixing" which appears to be the same as one of the methods disclosed in the instant specification as resulting in an agglomerate, see paragraph [0030] or P6/L30-P7/L8 specifically "the powders are mixed", Takuya teaches producing a dry agglomerate because the methods used are the same. Therefore, the references teach adding a solvent to a dry agglomerate that is formed form a mixture of dry powders.

Applicant further argues that Sauer does not disclose, teach, or even suggest adding a solvent to this dry mixture, and in fact teaches away from doing so when it discusses the shortfalls of using "wet" processes to form components of gas diffusion electrodes.

This is not considered persuasive. FIrstly, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Secondly, Sauer, as applicant noted in the arguments, teaches a method of forming agglomerates of dry mixtures (C2/L30+). As Takuya teaches mixing PTFE particles in a dry form and then adding an organic solvent but is silent to the particular mechanics of mixing, Sauer is replied upon to teach known methods of mixing to make a dry powder. Therefore, as both Sauer and Takuya are concerned with mixing particles to produce a dry powder, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the methods of making a dry powder of Sauer with mixing methods of Takuya to produce the dry powder. Furthermore, as Takuya is not limited to any specific examples of mixing and as blenders with blades were well known in the art at the time the invention was made, as evidenced by Sauer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any mixing device, including the blender with blades in the device of Sauer. Said combination would amount to use of a known element for its intended use in a known environment to accomplish entirely expected result.

Thirdly, Sauer is used to teach method of mixing a dry powder and to show that methods of preparing a dry powder are known in the art. Takuya discloses mixing a dry powder before adding solvent. However, Takuya is silent to the details of mixing said dry powder. Therefore, because Takuya teaches that preparing a dry powder before adding a solvent is desireable, the combination of references do not teach away from the invention. Furthermore, one of ordinary skill in the art at the time of invention would have sought out a reference that teaches methods of making a dry powder, such as Sauer, for the purpose of indentitying ways to mix a dry powder.

It is further noted that Takuya teaches the methods of forming an active layer and a gas diffusion layer by agglomerating a powder mixture with PTFE in a dry form, adding an organic solvent, calendaring the layer, and pressing the layers together (see previous rejection of claims 26, 45, and 61). Sauer is used as evidence that it is known in the art to prepare a powder mixture with PTFE particles by mixing in a dry form (C1/L63-68). However, as Takuya is silent to the precise details of the mixing, Sauer is used to teach appropriate methods of mixing a dry powder comprising PTFE. Therefore, as Takuya teaches mixing and Sauer teaches ways to perform said mixing, impermissible hindsight has not been used.